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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,123	12/06/2001	Anthony Jones	1	4803

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12/16/2003

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EXAMINER

STASHICK, ANTHONY D

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,123

Applicant(s)

JONES, ANTHONY *en*

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-4, 8-9, 11-13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcellus 1,257,086 in view of Gianetti 4,215,491. Marcellus '086 discloses substantially all the limitations as claimed including the following: a shoe 1 for applying a therapeutic solution and treatment for a user's foot; the shoe having a waterproof flexible shoe member having a sidewall portion 4, structurally arranged to seal the shoe member about the foot, and a sole portion (that shown at arch area 5 in Figure 1) adapted to receive a therapeutic solution and a user's foot therein; the shoe member structurally arranged to receive and enclose the user's foot with the therapeutic solution therearound (therapeutic solution is surrounding the foot in 7); the sole portion having an inner upper surface engageable with the user's foot (see Figure 1) and an outer lower surface engageable with a supporting surface (that in Figure 1 the is the outer side of the sole bottom); the sidewall portion of the shoe member has an upper end portion (located near 13) having sealing means 13 which secures the shoe to the ankle/leg of the user and prevents escape of the therapeutic solution from the shoe during therapeutic treatment; the lower surface of the sole having traction members (8 and 9) attached thereto to provide protection of the flexible shoe during usage and providing engagement with the supporting surface; the shoe made up of outer cover member and inner waterproof member (see Figure 1, the casing is made of two layers separated by fluid layer 7). Marcellus '086 does not teach the use of texturizing members on the upper surface of the sole member for massaging the user's foot with these

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texturizing members being located in the heel and sole area of the user's foot. Gianetti '491 teaches that it is desirable to have massaging protrusions 52 located over the entire inner surface of the boot and sole to massage and scrub the user's foot to aid in cleaning the user's foot. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place projection nodules, nipples, nubs, prongs or fibers, such as those taught in Gianetti '491, on the inside surface of the boot of Marcellus '086, to aid in massaging and cleaning the user's foot during use.

3. Claims 1, 3-4, and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer et al. 4,622,035 in view of Gianetti 4,215,491. Palmer et al. '035 discloses substantially all the limitations as claimed including the following: a shoe 10 for applying a therapeutic solution treatment for a user's foot; the shoe having a waterproof flexible shoe member 17 having a sidewall portion (that which follows the side of the user's foot) structurally arranged to seal the shoe member about the foot and a sole portion (that shown as the sole in Figure 3) adapted to receive a therapeutic solution and a user's foot therein; the shoe member structurally arranged to receive and enclose the user's foot with the therapeutic solution therearound (therapeutic solution is surrounding the foot and controlled by 15); the sole portion having an inner upper surface engageable with the user's foot (see Figures 1-3) and a outer lower surface engageable with a supporting surface (that in Figures 1-3 the is the outer side of the sole bottom); the sidewall portion of the shoe member has an upper end portion (located near 11) having sealing means 13 which secures the shoe to the ankle/leg of the user; sealing means is interlocking hook and loop members (see col. 4, lines 1-6) or snaps (snaps are art accepted equivalent fastening means). Palmer et al. '035 does not teach the use of texturizing members on the upper surface of the sole member for massaging the user's foot with these texturizing members being located in the heel and sole area of the user's foot. Gianetti '491 teaches that it is desirable to have massaging protrusions 52 located over the entire inner surface of the boot and sole to massage and scrub the user's

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foot to aid in cleaning the user's foot. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place projection nodules, nipples nubs, prongs or fibers, such as those taught in Gianetti '491, on the inside surface of the boot of Palmer et al. '035, to aid in massaging and cleaning the user's foot during use.

4. Claims 1, 3-4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basa 3,749,091 in view of Gianetti 4,215,491. Basa '091 discloses substantially all the limitations as claimed including the following: a shoe 1 for applying a therapeutic solution and treatment for a user's foot; the shoe having a waterproof flexible shoe member 5 having a sidewall portion structurally arranged to seal the shoe member about the foot and a sole portion 3 adapted to receive a therapeutic solution and a user's foot therein; the shoe member structurally arranged to receive and enclose the user's foot with the therapeutic solution therearound (see Figure 1 and Abstract); the sole portion having an inner upper surface engageable with the user's foot (see Figure 1) and an outer lower surface engageable with a supporting surface (that in Figure 1 the is the outer side of the sole bottom); the sidewall portion of the shoe member has an upper end portion (located near 21) having sealing means 17 which secures the shoe to the ankle/leg of the user; the lower surface portion having traction members 3 attached thereto providing protection of the flexible shoe during usage and providing engagement with the supporting surface. Basa '091 does not teach the use of texturizing members on the upper surface of the sole member for massaging the user's foot with these texturizing members being located in the heel and sole area of the user's foot 3. Gianetti '491 teaches that it is desirable to have massaging protrusions 52 located over the entire inner surface of the boot and sole to massage and scrub the user's foot to aid in cleaning the user's foot. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place projection nodules, nipples

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nubs, prongs or fibers, such as those taught in Gianetti '491, on the inside surface of the boot of Basa '091, to aid in massaging and cleaning the user's foot during use.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of the references applied to claim 1 above in view of Kim et al. 5,896,680. The references as applied to claim 1 above disclose all the limitations of the claim except for the texturizing members being fibers secured to the upper surface of the sole portion. Kim et al. '680 teaches that massaging or scrubbing members attached to the sole of a shoe can be made of elongated fiber network structures to aid in cushioning as well as massaging the user's foot during use. Therefore, it would have been obvious to make the projecting members of the references as applied to claim 1 above out of elongated fiber network structures, as taught by Kim et al. '680, to aid in cushioning the user's foot in the shoe as well as absorbing and applying the therapeutic solution to the user's foot.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 in paragraph 2 above in view of Kim et al. 5,896,680. The references as applied to claim 1 in paragraph 2 above disclose all the limitations of the claim except for the texturizing members being fibers secured to the upper surface of the sole portion. Kim et al. '680 teaches that massaging or scrubbing members attached to the sole of a shoe can be made of elongated fiber network structures to aid in cushioning as well as massaging the user's foot during use. Therefore, it would have been obvious to make the projecting members of the references as applied to claim 1 in paragraph 2 above out of elongated fiber network structures, as taught by Kim et al. '680, to aid in cushioning the user's foot in the shoe as well as absorbing and applying the therapeutic solution to the user's foot.

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7. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 13 in paragraph 2 above in view of Palmer et al. 4,622,035. The references as applied to claim 13 in paragraph 2 above disclose all the limitations of the claim except for the sealing means being hook and loop or snap fastening members. Palmer et al. '035 teaches that the sealing member that seals off the top portion of the boot to prevent the escape of the therapeutic material during use can contain hook and loop material to allow quick and easy adjustable closing of the upper for different sized legs. Therefore, it would have been obvious to make the sealing means of the references as applied to claim 13 in paragraph 2 above with hook and loop means to allow for quick and easy adjustability of the closing means, as taught by Palmer et al. '035. With respect to the snap fasteners, snap fasteners are art accepted equivalent fastening means to hook and loop means. Therefore, it would have been obvious to replace the hook and loop means with the art accepted equivalent snap fasteners to quickly close the upper portion of the boot.

Response to Arguments

8. Applicant's arguments filed September 30, 2003 have been fully considered but they are not persuasive. Applicant argues that Marcellus does not allow for contact between the user's foot and the hot water contained within the water compartment. This argument is not clearly understood. It appears applicant is arguing more than that which is claimed. The claims of the instant application do not require that the foot and the solution be located within the same boot, as it appears applicant is arguing. Therefore, Marcellus meets the limitations claimed. With respect to applicants arguments directed to Gianetti '491, the arguments are also not clearly understood. Gianetti '491 teaches the use of scrubbing nodules located within a boot to scrub the user's foot. These nodules can be used whether the boot is closed or open and therefore, the combination is deemed proper. Applicant's arguments with respect to Palmer are also not clearly understood. Palmer clearly teaches medication being applied to the user's

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foot within the boot. Applicant's arguments with respect to the combination of Basa and Gianetti are not clearly understood. Basa seals the boot and Gianetti was used to teach the use of massaging nodules in a boot. Applicant further argues that the material used in Kim '680 is used for cushioning and not applying a therapeutic solution. Kim was used to teach that projections located on the inside surface of a sole can be made of fibers, the application of those projections was taught by the base reference.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such

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papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Monday through Thursday from 6:30 am until 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

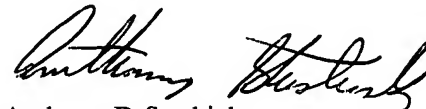
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/



Anthony D Stashick
Primary Examiner
Art Unit 3728

ADS
December 15, 2003